

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-74628

SAN LUIS OBISPO MOTHERS FOR PEACE, et al.

Petitioners-Appellants

v.

U.S. NUCLEAR REGULATORY COMMISISON,

Defendants-Appellees,

PACIFIC GAS AND ELECTRIC COMPANY, et al.

Intervenors

MOTION OF SAN LUIS OBISPO COUNTY
TO FILE AN AMICUS BRIEF

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Dated: March 22, 2004

Pursuant to FRAP Rule 29(b), the Board of Supervisors of San Luis Obispo County ("County") hereby demonstrates: (1) its interest in the subject case; and (2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of this case.

INTEREST OF THE AMICUS SAN LUIS OBISPO COUNTY

1. The County has substantial interests in this case because of its unique relationship with the subject of this case, an Independent Spent Fuel Storage Installation ("ISFSI"), which Pacific Gas & Electric ("PG&E") proposes to construct and operate on the site of the Diablo Canyon Nuclear Power Plant ("DCNPP"). The ISFSI is comprised of a number of cylindrical containers used to store nuclear spent fuel from DCNPP.

2. Because the site is located in San Luis Obispo County, the County has significant responsibilities for responding to the full extent of environmental impacts that could reasonably result from a successful terrorist attack on the proposed ISFSI. Such an attack could result in the release of substantial quantities of radioactive material, exposing the County's citizens to personal injury and the County's property to long-term radiological contamination and disrupting all normal activities, including business and education.

3. Significant County resources would be required to deal with the environmental impacts of a terrorist attack on the ISFSI.

4. Licensing of the ISFSI by the U.S. Nuclear Regulatory

Commission ("NRC") creates the potential for environmental impacts as a result of a terrorist attack on the ISFSI. Accordingly, the County has substantial interests in participating in the NRC's licensing proceeding to ensure that these potential environmental impacts are considered for the purposes of NEPA.

REASONS WHY AN *AMICUS* BRIEF IS DESIRABLE AND WHY THE
MATTERS ASSERTED ARE RELEVANT TO DISPOSITION OF THIS CASE

5. Despite the reasonable potential for such substantial impacts on the County and its citizens, the Nuclear Regulatory Commission ("NRC") refused to afford the County or its citizens, several of whom are members of Appellant San Luis Obispo Mothers for Peace ("SLOMFP"), any opportunity to be heard regarding alternatives for addressing terrorist attacks on the ISFSI and mitigation measures which could have been considered under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, *et seq*, as amended ("NEPA").

6. Of particular concern was the NRC rejection of all of all of the contentions which the County and its citizens proffered regarding PG&E's failure to include an evaluation of the environmental impacts of terrorist attacks in the Environmental Report ("ER"), which PG&E was required to file as part of the ISFSI application. 10 C.F.R. § 72.34.

7. PG&E's ER simply did not address the environmental impacts that could result from a terrorist attack on the ISFSI or consider alternative ISFSI sites or security measures that could mitigate the consequences of such environmental impacts. Nevertheless, the NRC determined that NEPA did not require it to consider the environmental impacts of a terrorist attack, and rejected all hearing requests on its alleged failure to comply with NEPA. The NRC also found that the public had nothing to contribute to the consideration of these kinds of environmental impacts.

8. The County could have contributed meaningfully to the NRC's consideration of environmental impacts. The County would have been able to apply its unique expertise about the immediate environment, health and security facilities, and capabilities. It is the County that will be the first and primary off-site responder to an emergency at DCNPP and it will be the County's resources and personnel that must be relied upon to mitigate the consequences of an attack on the ISFSI.

9. Having been precluded from raising these issues before the NRC, the County is requesting to file its *amicus* brief to ensure that it meets its obligations to the County's citizens by asking this Court to direct the NRC to at least consider the potential environmental impacts of a terrorist attack on PG&E's

ISFSI and use its licensing authority to mitigate any such impacts to the greatest extent possible.

10. Under the foregoing circumstances, an *amicus* brief is both desirable and necessary for the County to share its unique perspectives on its responsibilities and the related impacts of the NRC's licensing action on the County's resources.

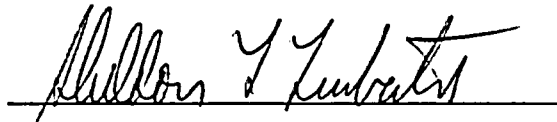
11. As the County's focus is on ensuring that the NRC apply the NEPA process as is required by law, and as the County has performed its own analysis that conforms to the applicable requirements of NEPA, the Court will benefit from the County's perspective on how the NRC can also conform to the same legal requirements.

For the foregoing reasons, the County respectfully moves to file an *amicus* brief in support of the Petitioners-Appellants, San Luis Obispo Mother for Peace, *et al.*, and reversal of the decision by the NRC in this proceeding.

Dated: March 22, 2004

Respectfully submitted,

James B. Lindholm, Esq.
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Office of the County Counsel
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A handwritten signature in black ink, appearing to read "Sheldon L. Trubatch", is written over a horizontal line.

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Respondent

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion of San Luis Obispo County to File an Amicus Brief have been served upon the following persons by U.S. mail, first class on this 22nd day of March, 2004:

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Washington, D.C. 20555-0001

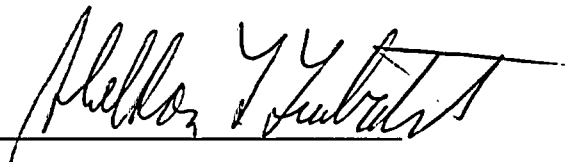
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